



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RĂCĂREANU v. ROMANIA

(Application no. 14262/03)

JUDGMENT

STRASBOURG

1 June 2010

FINAL

04/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Răcăreanu v. Romania,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Alvina Gyulumyan,

Egbert Myjer,

Luis López Guerra, *judges*,

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 11 May 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 14262/03) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Gheorghe Răcăreanu (“the applicant”), on 24 March 2003.

2. The applicant, who had been granted legal aid, was represented by Mr Adrian-Marius Mărășescu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. On 12 May 2009 the President of the Third Section decided to communicate to the Government the complaints concerning the conditions of the applicant's detention, the alleged interference with his private life and the alleged lack of fairness of the criminal proceedings instituted against the applicant. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

4. The Government's observations in the case were sent to the applicant on 8 December 2009 and he was invited to comment on them and submit his just satisfaction claims by 19 January 2010. The Court received no reply from the applicant within the time-limit.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Bucharest.

6. On 19 February 2001 the applicant was arrested by the Bucharest Police on suspicion of drug trafficking.

The next day he was placed in pre-trial detention by the prosecutor attached to the Bucharest District Court.

7. On 15 March 2001 the prosecutor committed the applicant for trial.

8. On 19 November 2001 the District Court convicted the applicant of drug trafficking and sentenced him to ten years and four months' imprisonment.

9. The sentence was upheld on appeal by the Bucharest County Court (decision of 3 April 2002) and on appeal on points of law by the Bucharest Court of Appeal (final decision of 25 June 2002).

10. On 30 August 2002 the applicant requested the revision of the judgment, arguing that he was in possession of new relevant evidence that would prove his innocence and that he was willing to deliver it in person to the prosecutor. On 3 February 2003 the Bucharest District Court declared his application inadmissible.

A. The applicant's detention

11. The applicant was held in detention from 19 February 2001 until his release on 19 May 2009.

12. Between 19 February 2001 and 4 July 2001 he was held in the detention facilities at Bucharest Police Station. From 4 July 2001 he was detained for the most part in Jilava Penitentiary and Rahova Penitentiary in Bucharest. For short periods of time, from March 2008, he served his sentence in the penitentiaries in Mărgineni, Tîrgu Jiu, Craiova and Aiud.

1. Applicant's description of the condition of detention

13. The applicant described the cells in Jilava Penitentiary as overcrowded and dirty, alleging that he contracted skin infections and scabies and caught fleas.

14. As for Rahova Penitentiary, he claimed that he shared a 6 sq. m room equipped with 10 beds with 11-13 other detainees. The room was infested with bedbugs and the walls were mouldy. Warm water was available once a week for one hour and heating was available in the evenings for one hour. The cell was ventilated through a window, but the

door was constantly closed. The window pane was missing and the inmates put up a blanket in order to cover it.

15. Outdoor exercise was allowed twice a week for one hour.

16. The food was bad, and meat was available only on Christian holidays and in the event of inspections.

17. The detainees were taken for medical check-ups once a week and when treatment was needed they were advised to seek medicine from their families.

2. Government's description of the conditions of detention

18. The Government provided official information, submitted by the Penitentiary authorities, concerning the size and facilities of all the cells that the applicant had occupied during his detention.

19. In Jilava, he stayed in the following cells: nos. 301, 209, 210, 310 and 314 which were all 32.99 sq. m in size and accommodated 19-44 inmates at the time; no. 510 which was 42.39 sq. m in size and accommodated 41-44 inmates at that time; and in no. 308 which was 51.23 sq. m in size and accommodated 23 inmates.

The official documents did not give the exact number of bunks per cell.

20. Each cell had a window and separate sanitary facilities with two toilets and a sink with drinking water. Hot water was available only in a special bathing area where the inmates were taken once a week.

Each winter heating was available between 1 November and 31 March, according to a pre-established schedule.

21. The inmates were responsible for the cleaning of their cells, using products put at their disposal by the penitentiary. Pest control measures and insecticide treatments were carried out each trimester.

22. The applicant was allowed at least 30 minutes of outdoor exercise per day.

23. In Rahova Penitentiary, the applicant shared a 19.55 sq. m cell with a maximum of 9 co-detainees. It had 10 bunk beds. A 5.55 sq. m room with a toilet and cold water was attached to the cell. Hot water was available twice a week between 12 noon and 2 p.m. and 5 p.m. and 7 p.m. The cells and the toilets had windows.

24. As in Jilava, the inmates cleaned their own cells and pest control measures were carried out each trimester.

Outdoor exercise was allowed for one to two hours each day.

B. Medical care in prison

25. According to the prison medical record, the applicant was registered on 19 February 2001 as a drug user, with the last dose being taken eight hours before the consultation. He was also recorded as suffering from post-traumatic stress, as a consequence of bone fractures suffered in 1996.

On 21 and 23 February 2001 he was recorded as suffering from withdrawal syndrome.

26. From 28 February to 4 March 2001 he went on hunger strike.

On 29 May 2003 the applicant was taken to the medical care centre after having attempted to commit suicide.

27. Regular check-ups were organised for the 1996 bone fractures. Several investigations were undertaken in the context of his requests for early release. On 5 February 2004 an orthopaedist in Jilava Penitentiary Hospital recommended surgery to remove the internal fixation (osteosynthesis) of the fractures. The repeated examinations and expert reports by the penitentiary doctors and by the Mina Minovici National Institute of Forensic Medicine (*Institutul Național de Medicină Legală Mina Minovici* - “the INML”) consistently concluded that adequate treatment and surgical intervention were possible in the penitentiary medical system.

However, the applicant refused to be operated on in the penitentiary hospitals.

28. In letters of complaint sent to various authorities and to the Court, the applicant and his wife claimed that the painkillers that he had received in prison had been insufficient for the pain associated with his bone fractures. From 2006 the applicant was given additional medicine for stomach ache, which he attributed to the painkillers prescribed.

C. Requests for early release on medical grounds

29. On two occasions the applicant requested early release from prison on medical grounds, arguing that the bone fractures he had suffered in 1996 needed further treatment.

30. His first request was rejected on 21 January 2004 by the Bucharest District Court, based on a medical expert report of 20 January 2004 which had concluded that the applicant's conditions were treatable in the penitentiary hospitals. The applicant appealed. A new expert report ordered in the case also concluded that the applicant was medically fit for detention. Therefore, on 24 June 2004 the Bucharest County Court upheld the above judgment. The County Court also found that, in so far as the applicant's conditions were treatable in the penitentiary hospitals, his repeated requests to be treated in a civilian hospital or abroad were an abuse of process.

31. His second request for release, filed with the Bucharest District Court on 29 September 2005, was finally rejected on 19 April 2007, after numerous postponements caused by the applicant's refusal to undergo a medical examination. The expert report drafted on 26 March 2007 after the applicant's examination concluded once again that his conditions were treatable in the penitentiary hospitals.

II. RELEVANT DOMESTIC LAW

32. The domestic legislation on the execution of sentences, in particular Law no. 23/1969, Emergency Ordinance no. 56/2003 (“Ordinance no. 56/2003”) and Law no. 275/2006, is described in *Petrea v. Romania*, no. 4792/03, §§ 21-23, 29 April 2008.

III. COUNCIL OF EUROPE DOCUMENTS

33. The relevant findings and recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) are described in *Bragadireanu v. Romania*, no. 22088/04, §§ 73-75, 6 December 2007, and *Artimenco v. Romania* (no. 12535/04, §§ 22-23, 30 June 2009). In particular, the Court notes that in the report on the 2002-2003 visits, the CPT expressed concern at the limited living space available to prisoners and the insufficient space provided by the regulations in place at that date. It also noted that prisoners were sometimes obliged to share a bed and that the toilets were not sufficiently separate from the living space.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

34. The applicant complained about the conditions of his detention in Jilava and Rahova Penitentiaries as well as about the medical treatment he received while he had been held in detention. He relied, in substance, on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

35. In particular he complained that he had been in drug withdrawal at the police headquarters, and had not been given medical assistance until late in the night, when he had been taken to a hospital, and then only after his inmates had alerted the guards to his state.

He alleged a lack of medical care in prison for his bone fractures, in terms of both the medicines received and the lack of surgical intervention.

36. He also claimed that he had had to live in overcrowded cells, which were infested with bugs and did not have adequate hygiene facilities.

A. Admissibility

37. The Government raised a preliminary objection of non-exhaustion of domestic remedies in so far as the applicant had not complained to the authorities about the conditions of his detention or the alleged lack of medical treatment, either before or after the entry into force of Ordinance no. 56/2003. In addition, they averred that the applicant could have lodged a civil law complaint against the Penitentiary for the conditions of detention.

38. The applicant made no comments on this point.

1. *Alleged lack of medical treatment*

39. The Court has already had the opportunity to examine a similar objection raised by the Government in the case of *Petrea*, cited above. It concluded that before the entry into force of Ordinance no. 56/2003, on 27 June 2003, there was no effective remedy for the situation complained of by the applicant. However, after that date, persons in the applicant's situation had an effective remedy to complain about the alleged lack of medical treatment even if their applications had already been pending with the Court at the relevant date (see *Petrea*, cited above, §§ 35-36).

40. The Court sees no reason to depart in the present case from the conclusions it reached in *Petrea*.

41. It therefore considers that after the entry into force of Ordinance no. 56/2003, the applicant should have lodged a complaint with the domestic courts about the alleged lack of medical treatment. His two requests for early release do not satisfy these conditions.

It follows that the part of the complaint concerning the alleged lack of medical treatment after 27 June 2003 should be rejected for non-exhaustion of domestic remedies.

42. As for the period before the entry into force of Ordinance no. 56/2003, the Court notes that the applicant complained about a specific episode that had taken place in police custody, that is, the lack of immediate medical assistance for his withdrawal symptoms. However, that episode took place on 19 February 2001, whereas the applicant lodged his complaint with the Court on 24 March 2003.

It follows that this part of the complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention (see *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004, and *Treptow v. Romania* (dec.), no. 30358/03, 20 May 2008).

43. Lastly, the Court finds no evidence in the file of any other potential breach of the applicant's right to receive treatment while in detention before the entry into force of Ordinance no. 56/2003.

In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they

do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. Conditions of detention

44. In the case of *Petrea*, cited above, the Court considered that no effective remedy was available for the complaints concerning the general conditions of detention (see *Petrea*, cited above, § 36).

45. It also notes that in so far as it concerns the conditions of detention, and in particular the overcrowding and poor sanitary facilities, this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

46. The Government contended that the authorities had made all the necessary efforts in order to ensure the applicant adequate detention conditions and medical care.

47. The applicant made no further comments on this point.

48. The Court refers to the principles established in its case-law regarding the conditions of detention (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, § 94, ECHR 2000-XI; *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; and *Sarban v. Moldova*, no. 3456/05, §§ 75-77, 4 October 2005).

49. The focal point in the instant case is the assessment by the Court of the living space afforded to the applicant in Jilava and Rahova Penitentiaries. The Government denied that the number of prisoners per cell had exceeded that of beds per cell. However, even at the occupancy rate indicated by the Government, the applicant's personal space seems to have been consistently below 3 sq. m., which falls short of the standards imposed by the case-law (see *Kokoshkina v. Russia*, no. 2052/08, § 62, 28 May 2009, and *Orchowski v. Poland*, no. 17885/04, § 122, ECHR 2009-... (extracts)). The amount of outdoor exercise stated by the Government cannot compensate, in the circumstances of this case, for the severe lack of personal space (see, conversely, *Sulejmanovic v. Italy*, no. 22635/03, §§ 8-49, 16 July 2009).

Moreover, the applicant's description of the overcrowding corresponds to the findings of the CPT (see paragraph 33 above).

50. The Court considers that as the parties' submissions about the sanitary conditions corroborate the CPT reports, it cannot but conclude that

the applicant was deprived of the possibility to maintain adequate bodily hygiene in prison.

51. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees and unsatisfactory sanitary conditions (see, in particular, *Ciorap v. Moldova*, no. 12066/02, § 70, 19 June 2007; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Kokoshkina*, § 64, and *Petrea*, §§ 49-50, judgments cited above).

In the case at hand, the Government failed to put forward any argument that would allow the Court to reach a different conclusion.

52. In the light of the above, the Court considers that the conditions of the applicant's detention caused him distress that exceeded the unavoidable level of suffering inherent in detention and that attained the threshold of degrading treatment proscribed by Article 3.

There has accordingly been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

A. Alleged breach of the defence rights

53. Invoking in substance Article 6 §§ 1 and 3 (c) and (d) of the Convention, the applicant complained of a breach of his defence rights. He referred in particular to the fact that his initial statements to the police had been made when he was experiencing drug withdrawal symptoms and in the absence of a lawyer of his choice, and that the courts had refused to hear key witnesses and had set aside his defence submissions without proper justification.

54. The Government claimed that the applicant had not complied with the six-month time-limit and stated that he should have been aware of the content of the final decision at the latest when he had requested its revision, that is more than six months before the lodging of this application with the Court.

55. The applicant made no comments on this point.

56. The Court reiterates that the object of the six-month time-limit under Article 35 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with within a reasonable time and that past decisions are not continually open to challenge. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see, for example, *Worm v. Austria*, 29 August 1997, §§ 32-33, *Reports of Judgments and Decisions* 1997-V).

57. The Court notes that this application was lodged on 24 March 2003, that is, nine months after the date when the final decision was adopted

(25 June 2002). The decision itself does not bear mention of the date when it was actually available to the applicant.

The Court has expressly asked the Government to provide this information, which they have failed to do. While the Court finds the Government's attitude regrettable, it cannot but notice that the applicant could also have provided this information to the Court, at least after the communication of the complaints to the respondent Government. In principle, the domestic courts can issue, on simple request, a certificate stating the date when the decision became available (*certificat de grefă*).

58. The Court notes that the applicant was released from prison on 19 May 2009 and could equally have sought this information himself. Moreover, since 12 October 2009 the applicant has been represented by counsel, who became aware of the objection of non-compliance with the six-month rule at the latest when he received a copy of the Government's observations (December 2009). The lawyer could have requested the aforementioned certificate from the local courts.

59. Therefore, this is not one of the situations when the burden of proof is shifted entirely on to the Government and the Court will not draw any negative conclusions from the Government's silence.

60. Considering the case on the basis of the file as it stands, the Court notes that the fact that the applicant lodged his request for revision on 30 August 2002 provides sufficient indication that he was already in possession of the full text of the final decision at that date (see, *mutatis mutandis*, *Marin v. Romania*, no. 30699/02, §§ 24-28, 3 February 2009).

61. It therefore concludes that he lodged his complaint at least seven months after the date when he had become aware of the content of the final decision.

This complaint has thus been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Fairness of the proceedings (requests for early release)

62. Lastly, the applicant complained under Article 6 § 1 of the Convention, invoked in substance, about the way in which his requests for early release had been examined by the courts.

63. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

65. The applicant did not submit a claim for just satisfaction within the time-limit set by the Court. Accordingly, there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conditions of detention (Article 3) admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention.

Done in English, and notified in writing on 1 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President